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**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE**

DELIVERY SOLUTIONS OF AMERICA, LLC,
a Utah Company,

Plaintiff,

vs.

MARK ABBRUZZESE, JULIE ZELICH,
EVERGREEN COURIER LLC, a Washington
Company and MEDNETIX LLC, a Washington
Company,

Defendants.

Case No.:

**COMPLAINT FOR DECLARATORY
RELIEF AND JURY DEMAND**

Plaintiff, Delivery Solutions of America, LLC (DSA) complains against Mark Abbruzzese, Julie Zelich, Evergreen Courier LLC, and Mednetix LLC, (collectively, Defendants) alleges as follows:

I. THE PARTIES

1. This action seeks a declaration that Mark Abbruzzese, Julie Zelich, Evergreen Courier LLC (Evergreen), and Mednetix LLC (Mednetix) are not employees of DSA and, further, that Evergreen and Mednetix have been compensated in compliance with the contracts they executed with DSA.

1 2. DSA is a limited liability company formed under the laws of Utah. Shippers contact
2 DSA to arrange for the transportation of their goods, and DSA identifies transportation companies
3 who are willing to haul those goods.

4 3. Abbruzzese is an individual who is a citizen of Washington and who is authorized
5 to sign contracts on behalf of Mednetix.

6 4. Zelich is an individual who is a citizen of Washington and who is authorized to sign
7 contracts on behalf of Evergreen.

8 5. Evergreen is a Washington limited liability company. Evergreen is a transportation
9 company that contracted with DSA in 2017 to provide transportation services to DSA's customers
10 for approximately a year.

11 6. Specifically, Evergreen agreed to and transported medical freight for DSA as a
12 contractor making pickups and deliveries for DSA's customers, including in the Seattle,
13 Washington area where Evergreen operated.

14 7. On information and belief, Abbruzzese and Zelich are the only members of
15 Evergreen.

16 8. Mednetix is a Washington limited liability company. Mednetix is a transportation
17 company that contracted with DSA in 2018 to provide transportation to DSA's customers from
18 May 1, 2018 until mid-2022.

19 9. Specifically, Mednetix agreed to and transported medical freight for DSA as a
20 contractor making pickups and deliveries for DSA's customers, including in the Seattle,
21 Washington area where Mednetix operated.

22 10. On information and belief, Abbruzzese and Zelich are the only members of
23 Mednetix.

24 11. On information and belief, Abbruzzese and Zelich are a married couple.
25

II. JURISDICTION AND VENUE

12. This action is brought under the federal Declaratory Judgment Act, 28 U.S.C. § 2201.

13. Jurisdiction is proper in this Court under 28 U.S.C. § 1332, because the parties are wholly diverse—DSA is a limited liability company whose sole member is a citizen of Florida, Abbruzzese and Zelich are citizens of Washington and, on information and belief, are the only members of Mednetix and Evergreen. Therefore, Mednetix and Evergreen are citizens of Washington. The amount in controversy exceeds \$75,000 as set forth below.

14. Jurisdiction is also proper in this Court under 28 U.S.C. §§ 1331 and 1367 (supplemental jurisdiction) because this Complaint seeks a declaration under the federal Fair Labor Standards Act and the remaining state law claims arise out of the same nucleus of facts as Plaintiff's federal claim.

15. Personal jurisdiction is appropriate in this District because Abbruzzese and Zelich are citizens of Washington and Mednetix and Evergreen are citizens of Washington.

16. Venue is appropriate in this Court under 28 U.S.C. § 1391(b)(1).

III. STATEMENT OF FACTS

17. Since at least 2017, Evergreen and Mednetix provided services to DSA's customers under a "Vendor Services Agreement" (VSA). By executing a VSA, the Evergreen and Mednetix were granted the right to operate pickup and delivery services for DSA's customers. Evergreen and Mednetix primarily delivered medical specimens and prescription medicine. Both Evergreen and Mednetix engaged drivers to make deliveries.

18. Zelich executed a VSA on behalf of Mednetix in 2018 and as recently as 2020. A true and accurate copy of the 2018 VSA is attached as Exhibit A.

19. Abbruzzese executed a VSA on behalf of Evergreen on July 27, 2017, a true and accurate copy of which is attached as Exhibit B.

20. This dispute arises out of the VSA between DSA and Mednetix and Evergreen.

21. On June 17, 2022, Abbruzzese sent the attached “15 Day NOTICE” of impending litigation to four DSA employees. In his June 17 email, Abbruzzese claimed a litany of contractual violations of the VSAs; violation state of federal employment statutes; among other things.

22. Over the course of approximately 3.5 years, DSA paid Evergreen and Mednetix approximately \$1.98 million for deliveries that their companies handled.

23. DSA has paid Evergreen and Mednetix in compliance with the terms of the applicable VSAs.

24. Over the last several months, Abbruzzese has continued to threaten litigation against DSA.

IV. COUNT I

DECLARATORY JUDGMENT REGARDING BREACH OF CONTRACT (EVERGREEN AND MEDNETIX)

25. DSA incorporates the preceding paragraphs herein by reference.

26. The VSA between DSA and Evergreen and the VSA between DSA and Mednetix set forth the terms of the parties' agreement including those services that Evergreen and Mednetix were to render for DSA's customers.

27. DSA has adhered to the terms of the VSAs in effect with both Evergreen and Mednetix.

28. DSA seeks a declaration that it did not breach the VSAs with Mednetix or Evergreen.

29. A justiciable controversy exists as to whether DSA breached the VSAs because Abbruzzese, on behalf of Evergreen and Mednetix, has alleged that DSA violated the contracts and has threatened legal action in which he intends to seek the recovery of damages for such alleged breaches.

V. COUNT II

**DECLARATORY JUDGMENT REGARDING COMPLIANCE WITH THE
WASHINGTON MINIMUM WAGE ACT (ABBRUZZESE AND ZELICH)**

30. DSA incorporates the preceding paragraphs herein by reference.

31. Abbruzzese and Zelich are both governors of Mednetix and Evergreen.

32. The VSAs that they signed on behalf of Mednetix and Evergreen expressly provided that their agreement with DSA was non-exclusive.

33. Mednetix and Evergreen were free to provide delivery or logistics services to any customer of their choosing.

34. Neither Abbruzzese nor Zelich was obligated to personally perform services for DSA.

35. In fact, Mednetix and Evergreen both engaged drivers to make deliveries under the terms of the applicable VSA.

36. Neither Abbruzzese nor Zelich was economically dependent on DSA, as that term is defined under Washington law.

37. DSA seeks a declaration that neither Abbruzzese nor Zelich was an employee of DSA.

38. A justiciable controversy exists as to Abbruzzese and Zelich's employment status in connection with their relationship with DSA because Abbruzzese, on multiple occasions, has

1 alleged that he and Zelich were employees and has threatened legal action in which he intends to
2 seek damages for alleged violations of the Washington Minimum Wage Act.

3 **VI. COUNT III**

4 **DECLARATORY JUDGMENT REGARDING VIOLATION OF THE FAIR**
5 **LABOR STANDARDS ACT (ABBRUZZESE AND ZELICH)**

6 39. DSA incorporates the preceding paragraphs herein by reference.

7 40. Neither Abbruzzese nor Zelich was economically dependent on DSA, as that term
8 is defined under federal law.

9 41. DSA seeks a declaration that neither Abbruzzese nor Zelich was an employee of
10 DSA.

11 42. A justiciable controversy exists as to Abbruzzese and Zelich's employment status
12 in connection with their relationship with DSA because Abbruzzese, on multiple occasions, has
13 alleged that he and Zelich were employees and has threatened legal action in which he intends to
14 seek damages for alleged violations of the Fair Labor Standards Act.

15 **JURY TRIAL**

16 Pursuant to Rule 38 of the Federal Rules of Civil Procedure, Plaintiff, DSA demands a trial
17 by jury of all issues so triable.

18 WHEREFORE, Defendants respectfully request this Court enter judgment in its favor and
19 against the Plaintiff, and to award costs and attorneys' fees.

PRAYER FOR RELIEF

Plaintiff respectfully request an Order from this Court:

- A. Declaring that DSA has complied with the terms of its VSAs with Evergreen and Mednetix;
- B. Declaring that Abbruzzese and Zelich are not employees of DSA under either Washington or federal law;
- C. For attorneys' fees and costs; and
- D. All other appropriate relief.

Dated: September 13, 2022

Respectfully submitted,

/s/ E. Ashley Paynter

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